

No. 77-1364

Supreme Court, U. S.  
**FILED**

**MAY 26 1978**

MICHAEL RODAK, JR., CLERK

**In the Supreme Court of the United States**

**OCTOBER TERM, 1977**

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**CENTRAL ARKANSAS AUCTION SALE, INC., ET AL.,  
PETITIONERS**

*v.*

**DEPARTMENT OF AGRICULTURE, ET AL.**

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**ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

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**MEMORANDUM FOR THE RESPONDENTS  
IN OPPOSITION**

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**WADE H. MCCREE, JR.,  
Solicitor General,  
Department of Justice,  
Washington, D.C. 20530.**

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Petitioners are operators of livestock marketing businesses that sell livestock at auction for a commission. Petitioners seek review of a decision by the Department of Agriculture (Pet. App. A13-A137) that new commission rates petitioners sought to institute were not "just, reasonable, and nondiscriminatory," as required by 7 U.S.C. 206. The Department approved alternative rate schedules that were

greater than petitioners' existing charges but less than the requested increases (see Pet. App. A2).<sup>1</sup> The court of appeals affirmed, holding that petitioners had adequate notice of the method of computation the Department employed to establish the reasonableness of proposed rates, that the ratemaking formula employed was permissible, and that the administrative order was supported by substantial evidence and assured petitioners a reasonable rate of return (570 F.2d 724; Pet. App. A1-A12).

Petitioners contend that the Department failed to publish and give adequate notice of the methods it used to calculate the rates petitioners would be permitted to charge (Pet. 8-19). This contention is apparently grounded on both the Administrative Procedure Act, 5 U.S.C. 553 (Pet. 18), and the Freedom of Information Act, 5 U.S.C. 552(a)(1)(D) (Pet. 15).<sup>2</sup> Similar arguments have been raised in *Giles*

<sup>1</sup> 7 U.S.C. 211 provides that whenever, after full hearing, the Secretary of Agriculture determines that any rates or charges are unjust, unreasonable, or discriminatory, the Secretary may determine and prescribe a just and reasonable rate or charge.

<sup>2</sup> Prior to the administrative hearing in the instant case, petitioners were provided with copies of the *Giles Lowery* decision. As we explain in our memorandum in opposition in that case, the Department of Agriculture used the *Giles Lowery* decision to establish certain ratemaking policies for the auction market business. After petitioners were provided with the *Giles Lowery* decision, they were granted a three-week continuance before the administrative hearing was convened (Pet. App. A4-A5). Petitioners therefore err in contending that they lacked notice of the Department's substantive rules at the time the administrative hearing was convened.

*Lowery Stockyards, Inc. v. Department of Agriculture*, petition for a writ of certiorari pending, No. 77-1366. For the reasons stated in our response in No. 77-1366, it is respectfully submitted that the petition for a writ of certiorari should be denied.<sup>3</sup>

WADE H. MCCREE, JR.,  
Solicitor General.

MAY 1978.

<sup>3</sup> Counsel for petitioners also represent the petitioner in No. 77-1366, and they thus have received our memorandum in that case.